GOVERNMENT OF MYSORE.

Labour Dispute—Industrial Dispute between the Workmen and the Management of M/s. Chandrana Brothers, P. B. No. 50, Hampanakatta, Mangalore.

Award of the Industrial Tribunal, Bangalore—published.
Read the following papers :—

(1) Letter No. 2079/66-67, dated 23rd December 1966 from Shri A. Panchaksharaiah, Presiding Officer, Industrial Tribunal, Bangalore.

BEFORE THE INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE.

Dated this 22nd day of December 1966.

Present

Sri A. Panchaksharaiah, B.A. (Hons) LL.B., ... Presiding Officer.

I. D. No. 1 of 1966.

Workmen of M/s. Chandrana Brothers, P. B. No. 50, Hampankatta, Mangalore. ... *I Party.*

Vs.

The Management of M/s. Chandrana Brothers, P.B. No. 50, Hampankatta, Mangalore. ... *II Party.*

Appearances :

For the 1st Party.—Sri Prabhakar Ghate, Secretary, Vanijya Shramika Sangha, Mangalore.

For the 2nd Party.—Sri R. K. Murthy, Legal Advisor, M/s Chandrana Brothers, Mangalore.

Reference: Government Order No. LMA 387 LLD 65, dated 4th January 1966.

AWARD

The Government of Mysore, in their order No. LMA 387 LLD 65, dated 4th January 1966, have referred under Section 10 (1) (d) of the Industrial Disputes Act, 1947, certain points of dispute for adjudication to this tribunal. The disputes existing are between the workmen of M/s. Chandrana Brothers, Manga-

lore, and the Management of M/s. Chandrana Brothers, Mangalore. The disputes are of two kinds. One is with regard to the dismissal of one Miss. Pauline Tauro on 17th April 1964 by the Management, and the other dispute is with regard to increments withheld to certain of its employees on the grounds that they should pass a knowledge test.

2. After the receipt of the Reference, the case was registered as I D. No. 1 of 1966 and parties were notified to file their claim and counter claim statements. The first party is represented by Sri Prabhakar Ghate, Secretary, Vanijya Shramika Sangha, Mangalore, while the II Party is represented by its Management, Miss Pauline Tauro was an employee under the II Party Management on a salary of Rs. 60 per month. She was appointed on 8th October 1962 and was working as a Sales Assistant in the Retail Department. On the score that she sold a brasserie for an incorrect price, a Show Cause Notice was issued to her on 12th March 1964 and after an enquiry her services were terminated on 17th April 1964. The first party contends that there was no under-selling of the article in question and even if it were so, it was not Miss. Pauline Tauro that under-sold this article, but the other trainee girl who is responsible, if at all, for this under-selling. It appears that on 7th March 1964 Miss. Pauline Tauro attended a lady customer in the Retail Department. This Lady Customer selected a brasserie and before she selected it, Miss Pauline Tauro left for her home with the permission of the General Manager on the score that she was not feeling well. She entrusted this task to Miss. Joice Veigas who prepared the Cash Bill for Rs. 5.25 as per Cash memo No. 228537, dated 7th March 1964. It was found that it was an under-billing. The Trainee girl ought to have billed it for Rs. 5.41. On 10th March 1964, Miss. Pauline Tauro gave a report to the General Manager stating that a brasserie has been sold for Rs. 5.25 by Miss Joice Veigas while it ought to have been sold for Rs. 5.41. The Charge reads that Miss. Pauline Tauro failed to prepare the bill herself and by her conduct has caused the brasserie to be undersold, though it was her duty to prepare the bill when she had herself dealt with the customer. She is also charged for overwriting the bill prepared by her co-worker. The I Party contends that Miss Pauline Tauro has not committed any offence and the charge is vague, and the principles of natural justice have not been observed. On that ground the I Party has attacked the enquiry as being illegal and not satisfying the requirements of law.

3. The 2nd point of dispute is that increments of the employees have been withheld from the month of October 1968. A list of those employees, who are 32 in number, is given by the first party. The I Party contends that by about the month of October each year, increments were being given to these people. But during the year 1964, instead of giving increments, as usual, the Management informed the members of the staff by a Notice that due to pressure of work and heavy engagements, they could not work out the increments to be paid to the staff members and that they may receive one month's salary as advance in place of the increments which would be worked later on and given to the workers. In spite of above assurance, the Management did not give the necessary increments to these staff members. Instead, a Show Cause Notice was issued to several of the Staff members on 5th November 1964 according to which the management proposed to stop increments of the staff members on the pretext that they had not appeared for a knowledge test. The I Party contends that the management has taken this step only to harass the members of the staff for having joined this Sangha. This withholding of increments is not just, and therefore the I Party workmen pray for securing increments due to them.

4. To this, the II party Management has filed a very very lengthy statement, most of which is irrelevant and the remaining is not to the point. With regard to dispute No. 1, the II Party contends that the enquiry is perfactly valid and has satisfied the principles of natural justice. Other contentions also have been urged, about which a ruling has already been given by me. The other contentions are about maintainability of this Reference, etc. Regarding the termination of the services of Miss. Pauline Tauro, the II Party contends that she is not entitled to be reinstated. It also contends that the services of Miss Pauline Tauro were none too satisfactory. Her conduct on 2 or 3 prior occasions was open to suspecion. On 7th March 1964 she behaved in a negligent manner with deliberate disregard to the specific instructions given to her by the Management. She was careless in entrusting the task of preparing the bill to the Trainee girl who committed this mistake. A regular charge sheet was issued to her and her explanation was obtained. Finding that her explanation was not satisfactory, an enquiry was held wherein the Enquiry Officer considered the evidence adduced by the Management and Miss. Pauline Taure and recommended for her dismissal. Accordingly the Management has terminated the services of Miss Pauline Tauro. There is nothing fishy about this enquiry.

5. , With regard to the 2nd point, the II Party submits that right from the year 1959, the Management was contemplating to hold a test for the workers and grant promotions and increments only to those who got through the Knowledge test. The II Party contends that earning of increments is not an automatic affair. The II Party pleads that it was agreed by the members of the Staff somewhere on 23rd October 1963 that henceforward regular tests would be held and only those who are successful in that test, would be entitled to increments and this was introduced as a sort of Reorganisation of scales of pay and increments and designations. As per the terms of this Reorganisation Scheme those who will not have passed the required test, will not be eligible for increments. On that ground also the workers are not entitle to any increments. The whole thing has been denied by the I Party. On the basis of these pleadings following seven issues have been framed on 29th October 1966.

"(1) Is the Reference invalid and illegal ?

(2) Is this Reference bad in law owing to misjoinder of issues as mentioned in para 4 of the counterstatement filed by the II Party ?

(3) Is this Reference vague, invalid and inoperative as no details are given with regard to the workmen, period and the rate of increment claimed ?

(4) Does the dismissal order in appeal in E. A. C. No. 3/64-65 bar the right of Miss Pauline Tauro from raising this industrial dispute ?

(5) Is the termination of the services of Miss Pauline Tauro illegal and unjustifiable ?

(6) Is the enquiry properly held and has it satisfied the principles of natural justice ?

(7) To what reliefs are the workmen entitled ?"

With regard to Issues Nos. 1 to 4, arguments were heard and an order was passed by me on 19th November 1966 rejecting the contentions of the II Party and holding issues 1 to 4 in favour of the first party. The only other issues for consideration are, issues Nos. 5 and 6 and also the question of increments.

6. Taking the first point into consideration. Sri Prabhakar Ghate, who appeared for the first party union, contended that the domestic enquiry held is vitiated at least on two grounds. His first contention is that the charges which Miss Pauline Tauro was required to meet, were very vague and they cannot be termed as charges at all. The 2nd and the most important contention is that there is no report of the Enquiry Officer giving out his reasons and discussion on the evidence adduced. In the absence of such a report of the Enquiry Officer, the whole enquiry is vitiated and it is not possible to know what reasons weighed with the Enquiry Officer to recommend for dismissal of Miss Pauline Tauro. The third contention is, even taking the evidence as a whole adduced by the Management, it does not prove the case of the Management against Miss Pauline Tauro. As such the dismissal Order has to be set aside.

7. Time and again Their Lordships of the Supreme Court have laid down the principles of natural justice to be observed by the Enquiry Officer in such cases. I need only refer to a decision of the Supreme Court reported in 1963 (ii) LLJ 367. Their Lordships of the Supreme Court have laid down the following dictum :—

> "It is now settled by various decisions that if an industrial employee's services are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse, the industrial tribunal is not entitled to consider the propriety or the correctness of the said conclusions. But the said decisions do not mean that the mere form of an enquiry would satisfy the requirements of industrial law and would protect the disciplinary action taken by the employer from challenge. An enquiry cannot be said to have been properly held unless
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> (i) the employee proceeded against has been informed clearly of the charges levelled against him,
>
> (ii) the witnesses examined-ordinarily in the presence of the employee-in respect of the charges,
>
> (iii) the employee is given a fair opportunity to cross examine witnesses,

(iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevent matter ; and

(v) the enquiry officer records his findings with reasons for the same in his report. "

Similarly, the Ruling given in 1963 (II) LLJ 452, may also be referred to. 1963 (I) LLJ 239 is another decision on this point. On that ground alone the termination order of Miss Pauline Tauro has to be set aside.

8. With regard to the 2nd point regarding the contention of the charge being vague, the first party is entitled to succeed. Ex. M7 is the charge sheet served on Miss Pauline Tauro. The first paragraph of Ex. M7 only narrates that Miss Pauline Tauro went home with the permission of the General Manager on the evening of 7th March 1964 entrusting the task of preparing the bill to the Trainee girl. The 2nd paragraph mentions the fact that on 10th March 1964 Miss Pauline Tauro submitted a report to the General Manager stating that a brasserie was sold by Miss Joice Veigas on 7th March 1964 for Rs.5.25 by mistake instead of selling it for Rs.5.41. The third para calls upon Miss Pauline Tauro to explain as to why she failed to prepare the bill herself and thus caused the bra. to be under sold though it was her duty to prepare the bill herself when she had handled the customer herself and she failed to inform the Assistant General Manager that she had not prepared the bill for a bra., which was sold to a lady customer and that she did not obtain permission of the Assistant General Manager for going home on the ground that she was not doing well. Further, she has been told that on 7th March 1964 she had originally noted the price of the bra. As Rs. 5.41 and put the total cash sales for that day at Rs.146.50 and subsequently changed Rs.5.41 by over-writing, into Rs.5.25. These are the charges which Miss Pauline Tauro is called upon to meet. I may say that these charges are inconsistent. I say it because para 1 of Ex. M7 shows that Miss Pauline Tauro went home on the evening of 7th March 1964 with the permission of the Assistant General Manager telling him that she was not well, whereas the third para of Ex. M7 contradicts itself. So it is not possible to say which is correct and which is wrong. From the evidence it is very clear that it was Miss Pauline Tauro herself that pointed out the mistake committed by her trainee worker. The evidence of this trainee is also placed on record and according to her evidence,

the customer was trying the brasserie given by Miss Tauro and in the meanwhile Miss Tauro told this witness that she was not feeling well and therefore she may, after the customer comes out of the trial room, make the bill. Not only this, but Miss Tauro directed this witness to the price list and asked her to prepare the bill according to the price list, Ex. B. In cross examination she admits that it was Miss Tauro that pointed out the mistake committed by this Trainee girl and this witness came to know of the mistake only when it was pointed out to her by Miss Pauline Tauro. Further, she admits that it was Miss Tauro herself that detected the mistake while preparing the Sales Report. This is quite evident from the conduct of Miss Pauline Tauro. If she herself had done it, she would have done everything to cover her mistake and not try to point out the mistake committed by the trainee girl. The evidence of this witness is supported by the evidence of another witness examined as witness No. 2 for the Management. This witness is the Manager of the Ready-made Section. According to him it was Miss Pauline Tauro that informed him and also all other Ready-made Sales Staff about the under-billing of Maiden-form brasserie by the trainee girl. It is therefore clear that for doing a honest thing Miss Pauline Tauro has been punished. The evidence of P.W.5, Manager, Sales Department is quite contrary to what is found in the charge sheet. According to para 1 of the Charge Sheet Miss Pauline Tauro took the permission of this witness on that evening to go home because she was not well, whereas the evidence of P.W.5 is that she did not go to him for permission. This only goes to show that there has been some click in the management between these people to get rid of Miss Pauline Tauro.

9. This circumstance very clearly points out the innocence of Miss Pauline Tauro. Added to this, the absence of the Enquiry Officer's Report is also there. I have observed in the begining alone that the absence of the Enquiry Officer's Report itself is sufficient to throw out the case of the management and this is an additional circumstance to prove that the management has behaved vindictively so far as Miss Pauline Tauro is concerned and the order of termination of her services cannot stand even for a minute. The order terminating the services of Miss Pauline Tauro therefore is set aside and the Management is directed to reinstate her with effect from 17th April 1964, with full back wages from 17th April 1964.

10. As regards the 2nd point, the Management has examined one witness' *viz.*, the General Manager. His evidence is that for the last 20 years he has been the General Manager in the II party firm. The II Party has introduced a scheme regarding the pay scales and designations of their employees. This Scheme is Ex.M1 and it is introduced with effect from 21st October 1963. Even before the introduction of the Reorganisation Scheme, the members of the staff were given regular increments. The witness adds that they were given on the strength of merit of the worker. The witness says that the Reorganisation Scheme Ex. M1, was explained to every member of the staff before it was introduced. All the members have signed Ex. M1 in token of their having accepted the Reorganisation Scheme. This Scheme was explained to the workers on 23rd October 1963. According to the evidence of this witness, the Scheme was explained to the members long after it was introduced. Therefore there is no point in saying that the workers who have signed Ex. M1 before it was introduced, have agreed to abide by the terms of Ex M1. The evidence of M. W. 1 is that a meeting of the Staff members was held and those who were present at the meeting, have signed the Proceedings Book Ex. M2. As per the Reorganisation Scheme one has to pass the required Knowledge Test before entitling himself or herself for an increment. Agreeing to this condition the members of the staff have signed the proceedings of the meeting. Ex. M3 is the Model Question Paper which the members of the staff have to answer. This test was in operation from 1959 and onwards and if that were so, there was no necessity for the management to get a re assurance from the members of the staff about holding the test. As per Ex. M5, a knowledge test was held on 3rd October 1964 and some members attended the test while some refused to attend. The witness admits that the management was in a habit of summoning meetings of the staff frequently and for having attended those meetings the management would take the signatures of the members of the staff. It is therefore possible that the members of the staff, even though they have signed the proceedings of 23rd October 1963, they have done it only to show that they have attended the meeting and not in recognition of their having accepted the test as a condition precedent for earning increments. Very peculiarly enough a perusal of the proceedings of 23rd October 1963 will go to show that they have not accepted the condition of test. The Management has produced Ex. M2, Proceedings Book, dated 23rd October 1963. All that the members of the staff have written is that they have received the pay scale slips on 23rd

October 1963 and it is nowhere said against their signatures that they have accepted the test as a condition precedent to earning an increment. Even reading the proceedings of 23rd October 1963 as a whole, it can nowhere be gathered that earning of an increment depends upon the passing of the test. Moreover, the proceedings are all in English. As to how many people understood English language, it is difficult to imagine. Ex. M1 has also been produced to show the proposed Reorganisation Scheme. Even here it is so. The signatures are taken on the last page of Ex. M1 of some of those workmen. Granting for the sake of arguments that this amounts to a contract it must be remembered that the members of the Union cannot be bound by this contract, because the provisions of the Contract Act and the contractual obligations are not applicable in the same way as they would apply to other contracts. The reason is that the parties are not placed in the same position. Due to the unequal position between the management and the labour, such contracts are not strictly enforced. I would only refer to a decision of the Supreme Court reported in 1961 (I) LLJ 521, in this connection. Moreover, it is not also possible to gather from Ex. M2 as to what kind of test the members of the staff were required to pass. A Model Question Paper has been produced and it is marked Ex.M3. This Ex. M3. is in English. As to how many of the workers understand English and how many do not, there is no evidence M. W. 2 admits that such a kind of practice of holding examinations in private concerns of the type of this Chandrana Brothers, is not available anywhere in India and he is the person who admits of having widely travelled throughout India and having gained lot of experience in the business of this kind. It is therefore meaningless to state that the members of the staff agreed to pass the test before entitling themselves to earn increments. The 2nd point of dispute is also decided in favour of the workmen.

11. In the result I hold on Issue No. 5 that the termination of the services of Miss Pauline Tauro is illegal and unjustifiable. On Issue No. 6 my finding is that the enquiry has not been properly held and it does not satisfy the principles of natural justice. Therefore Miss Pauline Tauro is entitled to be reinstated with effect from 17th April 1964 with full back wages and she is deemed to be in continuous service. With regard to the second point, my finding is that the Management of M/s. Chandrana Brothers are not justified in withholding the increments of the employees a list of whom is given by the first party, on the score that they have to pass a knowledge test. The Management will

give each of the persons listed, the necessary increments from the date they have been withhled. This is my award in this case.

12. As regards the costs, each party will bear its own costs.

A. PANCHAKSHARIAH,

Presiding Officer,

Industrial Tribunal.

ORDER.

Bangalore, dated 3rd January 1967.

S. O. 178.—WHEREAS by State Government Order No. PLM 387 LLD 65, dated 4th January 1966, the Industrial Dispute between the Workmen and the Management of M/s. Chandrana Brothers, P. B. No. 50, Hampanakatta, Mangalore was referred to the Industrial Tribunal, Bangalore, for adjudication.

AND WHEREAS the Industrial Tribunal, Bangalore has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 387 LLD 65.]

By Order and in the name of the Governor of Mysore,

1874 G. G. PUROHIT, *Under Secy.*